IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

WP(C).No. 29887 of 2007(G)

PETITIONER:

SALIL GUPTA, AGED 42 YEARS,
S/O. ESWAR CHANDRA GUPTA, D 12 A,
CHACKOLAS HABITATE, THEVARA P.O., ERNAKULAM
VILLAGE, KANAYANNOOR TALUK, ERNAKULAM.

BY ADV. SRI.V.M.KURIAN
SRI.MATHEW B.KURIAN
SRI.K.T.THOMAS
SRI.C.R.SREEKUMAR
SRI.TULASI PANICKER

RESPONDENT:

JOSEPH, AGED 50 YEARS, S/O. MATHEW,
NADUVILEKANDOTHUPARAMBIL, CHORAPPILLY,
MULAVUKADU DESOM, MULAVUKADU VILLAGE,
KANAYANNOOR TALUK, ERNAKULAM.

BY ADV. SRI. T.K. SHAJAHAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

M.N. KRISHNAN, J.

= = = = = = = = = = = = = = =

W.P.C. NO. 29887 OF 2007

= = = = = = = = = = = = = = =

Dated this the 10th day of October, 2007.

J U D G M E N T

This writ petition is filed against the judgment of the Subordinate Judge, Ernakulam in O.S.499/06. The suit is one for specific performance of a contract and in the alternative for damages. A reading of the plaint would reveal that the real grievance of the plaintiff is that he is prepared to perform his part of the contract provided the actual property is measured and consideration fixed. Whereas the defendant enters appearance and stated that he is ready to execute the sale deed in his favour. So the principal question revolves round the extent of the property and what will be the impact of that contention in the light of the agreement executed between the parties. There is also a specific averment in the plaint that the plaintiff is ready and willing to perform his part of the contract. It is also seen that there is an alternate prayer for damages in the suit.

2. Quite unfortunately, the learned Subordinate Judge rejects the plaint holding that the plaint does not disclose the cause of action. It has been settled in very many cases that to decide the cause of action and to throw the case at the threshold the real duty of the Court is to peruse the pleadings filed in the case and not to look into extraneous matters. So gross injustice has been done and it comes perfectly within the four parameters of the decision reported in ***Surya Dev Rai v. Ram Chander Rai and others (2003 (6) SCC 675)***. Therefore, though with hesitation, I am bound to interfere with the judgment of the Court below under this writ jurisdiction by setting aside the same and direct the learned Subordinate Judge to restore the suit back to file and proceed in accordance with law. I make it clear that I am not expressing any opinion regarding the merits or demerits of the contention of the parties in the

case. Since the written statement is also filed I direct the Court below to dispose of the matter within a period of three months from the date of its restoration.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

ul/-